

1 THE HONORABLE MARSHA J. PECHMAN

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 VERITY SOLUTIONS GROUP, INC.

11 Plaintiff,

12 v.

Case No. 2:18-cv-00235

13 HEALTHSTREAM, INC. and VERITY, INC.,
a HealthStream Company,

STIPULATED PROTECTIVE ORDER

14 Defendants.
15

16 1. PURPOSES AND LIMITATIONS

17 Discovery in this action is likely to involve production of confidential, proprietary, or
18 private information for which special protection may be warranted. Accordingly, the parties
19 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
20 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
21 protection on all disclosures or responses to discovery, the protection it affords from public
22 disclosure and use extends only to the limited information or items that are entitled to
23 confidential treatment under the applicable legal principles, and it does not presumptively entitle
24 parties to file confidential information under seal.

25 2. “CONFIDENTIAL” MATERIAL

26 “Confidential” material shall include the following documents and tangible things

1 produced or otherwise exchanged: bank account numbers, tax information, and identifying
2 information such as social security numbers.

3 3. SCOPE

4 The protections conferred by this agreement cover not only confidential material (as
5 defined above), but also (1) any information copied or extracted from confidential material;
6 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
7 testimony, conversations, or presentations by parties or their counsel that might reveal
8 confidential material. However, the protections conferred by this agreement do not cover
9 information that is in the public domain or becomes part of the public domain through trial or
10 otherwise.

11 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

12 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
13 or produced by another party or by a non-party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
15 the categories of persons and under the conditions described in this agreement. Confidential
16 material must be stored and maintained by a receiving party at a location and in a secure manner
17 that ensures that access is limited to the persons authorized under this agreement.

18 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the designating party, a receiving party may
20 disclose any confidential material only to:

21 (a) the receiving party's counsel of record in this action, as well as employees of
22 counsel to whom it is reasonably necessary to disclose the information for this litigation;

23 (b) the officers, directors, and employees (including in house counsel) of the
24 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
25 agree that a particular document or material produced is for Attorney's Eyes Only and is so
26 designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this
2 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
3 A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the duplication of
6 confidential material, provided that counsel for the party retaining the copy or imaging service
7 instructs the service not to disclose any confidential material to third parties and to immediately
8 return all originals and copies of any confidential material;

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
10 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
11 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
12 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
13 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
14 under this agreement;

15 (g) the author or recipient of a document containing the information or a custodian
16 or other person who otherwise possessed or knew the information.

17 4.3 "ATTORNEYS' EYES ONLY" Confidential Information

18 The Parties agree that certain Confidential Information necessary to complete discovery
19 in this matter, including, but not limited to, trade secret information, business plans, and financial
20 information, may require further protection than is provided in the paragraphs above. This
21 further protection may be warranted as a result of the information's competitive value in the
22 current marketplace; the irreversible damage to one or more parties should the information be
23 disclosed; and/or the potential to seriously and irreversibly disrupt current business and/or
24 employee relations. This Confidential Information may be designated "Attorneys' Eyes Only."
25 The designation of any document, material, or information as "Attorneys' Eyes Only" shall
26 constitute a certification by the attorney reviewing the material and making such designation that

1 he or she in good faith believes the material deserves this heightened level of protection and shall
2 be used sparingly. Confidential Information designated "Attorneys' Eyes Only" shall be
3 restricted solely to:

4 (a) outside counsel for the Parties and their employees necessarily involved in the
5 conduct of this litigation;

6 (b) experts and consultants to whom disclosure is reasonably necessary for this litigation
7 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (c) any person who is familiar with such information from some context other than the
9 litigation itself; and

10 (d) the Court, jury, court personnel, court reporters, and similar personnel.

11 Whenever information designated as "Attorneys' Eyes Only" pursuant to this Protective
12 Order is to be discussed by a party or disclosed in a deposition, hearing, or pre-trial proceeding,
13 the designating party may exclude from the room any person, other than the persons designated
14 as appropriate, for that portion of the deposition, hearing or pre-trial proceeding.

15 4.4 Filing Confidential Material. Before filing any confidential material or
16 discussing or referencing such material in court filings, the filing party shall confer with the
17 designating party to determine whether the designating party will remove the confidential
18 designation, whether the document can be redacted, or whether a motion to seal or stipulation
19 and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
20 followed and the standards that will be applied when a party seeks permission from the court to
21 file material under seal.

22
23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
25 or non-party that designates information or items for protection under this agreement must take
26 care to limit any such designation to specific material that qualifies under the appropriate

standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial or trial proceedings: the parties and any participating non-parties must identify on the record, during the deposition, or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the

transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
2 intervention, the designating party may file and serve a motion to retain confidentiality under
3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
5 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
6 other parties) may expose the challenging party to sanctions. All parties shall continue to
7 maintain the material in question as confidential until the court rules on the challenge.

8 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
9 IN OTHER LITIGATION

10 If a party is served with a subpoena or a court order issued in other litigation that compels
11 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
12 party must:

13 (a) promptly notify the designating party in writing and include a copy of the
14 subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to issue in
16 the other litigation that some or all of the material covered by the subpoena or order is subject to
17 this agreement. Such notification shall include a copy of this agreement; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
19 designating party whose confidential material may be affected.

20 8. PROTECTED MATERIAL REQUESTED BY PLAINTIFFS IN THIS ACTION FROM
21 THIRD PARTIES INVOLVED IN OTHER LITIGATION WITH CERTAIN
22 DEFENDANTS IN THIS ACTION

23 The parties may request documents and/or information from non-parties through
24 subpoenas that one of the parties to the present matter deems confidential. Accordingly, should
25 a party issue a subpoena that another party believes may result in the production of material that
26 it believes is confidential, that party may designate the requested material as Confidential or
Attorneys’ Eyes Only under the instant Protective Order. The parties specifically agree that they

1 may use such materials for purposes of this lawsuit pursuant to this Protective Order, subject to
2 evidentiary objections.

3 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
5 material to any person or in any circumstance not authorized under this agreement, the receiving
6 party must immediately (a) notify in writing the designating party of the unauthorized
7 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
8 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
9 of this agreement, and (d) request that such person or persons execute the “Acknowledgment
10 and Agreement to Be Bound” that is attached hereto as Exhibit A.

11 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

13 When a producing party gives notice to receiving parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery
17 order or agreement that provides for production without prior privilege review. The parties agree
18 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

19 11. NON TERMINATION AND RETURN OF DOCUMENTS

20 Within 60 days after the termination of this action, including all appeals, each receiving
21 party must return all confidential material to the producing party, including all copies, extracts
22 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
23 destruction.

24 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
25 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
26 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
work product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
5 any documents in this proceeding shall not, for the purposes of this proceeding or any other
6 proceeding in any other court, constitute a waiver by the producing party of any privilege
7 applicable to those documents, including the attorney-client privilege, attorney work-product
8 protection, or any other privilege or protection recognized by law.

9
10 Dated: August 7, 2018

11 DLA PIPER LLP (US)

12
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Attorneys for Defendants

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 7, 2018

A handwritten signature in black ink, appearing to read "Marsha J. Pechman", written over a horizontal line.

The Honorable Marsha J. Pechman
United States Senior District Court Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____, [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Western District of Washington on
7 _____ [date] in the case of *VERITY SOLUTIONS GROUP, INC., a Delaware*
8 *corporation, Plaintiff, v. HEALTHSTREAM, INC., a Tennessee corporation; VERITY, INC., a*
9 *HealthStream Company, a Tennessee corporation, Defendants*, Civil Action No. 2:18-cv-00235.
10 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
11 understand and acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
13 any information or item that is subject to this Stipulated Protective Order to any person or entity
14 except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Western District of Washington for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this action.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____

I hereby certify that on the 3rd day of August, 2018, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/